

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K GARRISON (1946-1991)  
RANDOLPH E PAUL (1946-1956)  
SIMON H RIFKIND (1950-1995)  
LOUIS S WEISS (1927-1950)  
JOHN F WHARTON (1927-1977)

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A  
NO 7 DONG SANHUA ZHONGLU  
CHAO YANG DISTRICT  
BEIJING 100020  
PEOPLE'S REPUBLIC OF CHINA  
TELEPHONE (86-10) 5828 6300

12TH FLOOR, HONG KONG CLUB BUILDING  
3A CHATER ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2846-0300

ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU, U K  
TELEPHONE (44 20) 7367 1600

WRITER'S DIRECT DIAL NUMBER  
(212) 373-3163

WRITER'S DIRECT FACSIMILE  
(212) 373-2399

WRITER'S DIRECT E-MAIL ADDRESS  
jaycohen@paulweiss.com

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2 CHOME  
CHIYODA-KU TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE  
77 KING STREET WEST, SUITE 3100  
PO BOX 226  
TORONTO, ONTARIO M5K 1J3  
TELEPHONE (416) 504-0520

2001 K STREET, NW  
WASHINGTON, DC 20006-1047  
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200  
POST OFFICE BOX 32  
WILMINGTON DE 19899-0032  
TELEPHONE (302) 655-4410

MATTHEW W ABBOTT  
ALLAN J ARFFA  
ROBERT A ATKINS  
DAVID J BALL  
JOHN J BIGHMAN  
LYNN B BAYARD  
DANIEL J BELLER  
CRAIG A BENSON  
MITCHELL L BERG  
MARK S BERGMAN  
BRUCE BERNHEIM  
H CHRISTOPHER BOEHNING  
ANGELO BONVINO  
JAMES L BROCHIN  
RICHARD J BRONSTEIN  
DAVID W BROWN  
SUSANNA M BUERGEL  
PATRICK S CAMPBELL\*  
JESSICA S CAREY  
JEANETTE K CHAN  
YVONNE Y F CHAN  
LEWIS R CAYTON  
JAY COHEN  
KELLEY A CORNISH  
CHRISTOPHER J CUMMINGS  
CHARLES E DAVIDOW  
DOUGLAS R DAVIS  
THOMAS V DE LA BASTIDE III  
ARIEL J DECKELBAUM  
ALICE BELISLE EATON  
ANDREW J EHRLICH  
GREGORY A EZRING  
LESLIE GORDON FAGEN  
MARC FALCONE  
ANDREW C FINCH  
BRAD J FINKELSTEIN  
ROBERTO FINZI  
PETER E FISCH  
ROBERT C FLEDER  
MARTIN FLUMENBAUM  
ANDREW J FOLEY  
HARRIS B FREIDUS  
MANUEL S FREY  
ANDREW L GAINES  
KENNETH A GALLO  
MICHAEL E GERTZMAN  
PAUL D GINSBERG  
ADAM M GIVERTZ  
SALVATORE GOGLIORMELLA  
ROBERT D GOLDBAUM  
NEIL GOLDMAN  
ERIC S GOLDSTEIN  
ERIC GOODISON  
CHARLES H GOOGE, JR  
ANDREW G GORDON  
UDJI GROFMAN  
NICHOLAS GROOMBRIDGE  
BRUCE A GUTENPLAN  
GAINES GWATHMEY, III  
ALAN S HALPERIN  
JUSTIN G HAMILL  
CLAUDIA HAMMERMAN  
GERARD E HARPER  
BRIAN S HERMANN  
ROBERT M HIRSH  
MICHELE HIRSHMAN  
MICHAEL S HONG  
JOYCE S HUANG  
DAVID S HUNTINGTON

JEH C JOHNSON  
MEREDITH J KANE  
ROBERTA A KAPLAN  
BRAD S KARP  
JOHN C KENNEDY  
ALAN W KORNBERG  
DANIEL J KRAMER  
DAVID K LAKHDHIR  
STEPHEN P LAMB\*  
JOHN E LANGE  
DANIEL J LEFFELL  
XIAOYU GREG LIU  
JEFFREY D MARELL  
MARCO V MASOTTI  
EDWIN S MAYNARD  
DAVID W MAYO  
ELIZABETH R MCCOLM  
MARK F MENDELSON  
WILLIAM B MICHAEL  
TOBY S MYERSON  
CATHERINE NYARADY  
JOHN J O'NEIL  
ALEX YOUNG K OH  
BRAD R OKUN  
KELLEY D PARKER  
MARCE E PERLMUTTER  
VALERIE E RADWANER  
CARL L REISNER  
WALTER G RICCIARDI  
WALTER RIEMAN  
RICHARD A ROSEN  
ANDREW N ROSENBERG  
JACQUELINE P RUBIN  
RAPHAEL M RUSSO  
JEFFREY D SAFERSTEIN  
JEFFREY B SAMUELS  
DALE M SARRO  
TERRY E SCHIMEK  
KENNETH M SCHNEIDER  
ROBERT B SCHUMER  
JAMES H SCHWAB  
JOHN M SCOTT  
STEPHEN J SHIMSHAK  
DAVID R SICULAR  
MOSES SILVERMAN  
STEVEN SIMKIN  
JOSEPH J SIMONS  
MARILYN SOBEL  
AUDRA J SOLOWAY  
TARUN M STEWART  
ERIC ALAN STONE  
AIDAN SYNNOTT  
ROBYN F TARNOSKY  
MONICA K THURMOND  
DANIEL J TOAL  
LIZA M VELAZQUEZ  
MARIA T VULLO  
LAWRENCE G WEE  
THEODORE V WELLS JR  
BETH A WILKINSON  
STEVEN J WILLIAMS  
LAWRENCE I WITDORCHIC  
MARK B WLZLO  
JULIA MASON WOOD  
JORDAN E YARETT  
KAYE N YOSHINO  
TONG YU  
TRACEY A ZACCONE  
T ROBERT ZOCHOWSKI, JR

\*NOT ADMITTED TO THE NEW YORK BAR

January 17, 2013

**Via ECF**

The Honorable Joseph E. Irenas, S.U.S.D.J.  
United States District Court for the District of New Jersey  
Mitchell H. Cohen Federal Building & U.S. Courthouse  
1 John F. Gerry Plaza, Room 310  
Camden, NJ 08101

**Re: *Brady, et al. v. Air Line Pilots Association, Int'l*  
Civil Action No. 02-2917 (D.N.J. Camden) (JEI)**

Dear Judge Irenas:

We write in response to plaintiffs' letter of yesterday afternoon requesting a conference with the Court to address plaintiffs' motion for a protective order. In that motion, plaintiffs seek to prevent the depositions of two fact witnesses, John Hefley and Scott Schwartz, that the Court has already expressly authorized.

Pursuant to the Court's November 15, 2012 Order, ALPA is subject to a January 31, 2013 deadline for completing the depositions of Hefley and Schwartz, as well as the depositions of four additional TWA-related witnesses and plaintiffs' two experts. (Nov. 15, 2012 Order ¶¶ 1, 2.) As the Court recalls, this Order was issued following the November 15, 2012 Status Conference, during which ALPA sought and obtained the Court's permission to depose Hefley, Schwartz, and the other witnesses. (Nov. 15, 2012 Status Conference Tr. at 71; Nov. 15, 2012 Order ¶ 1.) During the Status Conference, Plaintiffs' counsel expressly stated that he had "no objection to the TWA discovery [ALPA] seek[s]." (Nov. 15, 2012 Tr. at 33.) And plaintiffs raised no objections at any

PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP

The Honorable Joseph E. Irenas, S.U.S.D.J.

2

time in the nearly two months that followed, even though the parties appeared again before the Court on January 4 in connection with defendant's motion to amend.

At the November 15 Conference, I detailed for the Court the reasons ALPA proposed to take these depositions, which are independent of their membership in the plaintiff class. (Nov. 15, 2012 Status Conference Tr. at 19-27.) Specifically, I explained that these witnesses would provide testimony demonstrating that "TWA had no options" and "was on the verge of bankruptcy," issues that go to the heart of plaintiffs' damages theory. (Nov. 15 Tr. at 26.) To support their theory of damages, plaintiffs' experts assert that the TWA pilots could have negotiated a better seniority integration list with the Allied Pilots' Association ("APA") because, they assume, the TWA pilots' "reasonable [pre-transaction career] expectations" were relatively high.

By virtue of their positions on the TWA Master Executive Council ("MEC"), Hefley and Schwartz have factual information relevant to this foundational assumption for the plaintiffs' expert reports. Schwartz was the Vice Chairman of the TWA MEC and even offered testimony during TWA's bankruptcy proceeding in support of American Airlines' acquisition of substantially all of TWA's assets. Hefley served on (and authored the minutes of) the TWA MEC's Merger Committee, which was charged with negotiating with the APA regarding seniority integration. We thus made clear at the conference that we were seeking to depose these witnesses not in their capacities as class members, but as percipient fact witnesses. In particular, in view of their positions, both witnesses are expected to have knowledge concerning, among other things, (i) TWA's perilous financial condition at the time of the transaction, (ii) the absence of any viable alternatives to American Airline's proposed asset acquisition, and (iii) the history of the negotiations between representatives of the TWA MEC and the APA regarding seniority integration. All of these issues bear directly on the viability of plaintiffs' speculative and counter-factual damage models. Notwithstanding their awareness of our rationale for these depositions and the status of Hefley and Schwartz as non-representative members of the class, Plaintiffs' counsel expressly stated at the Status Conference that he had no objections to this discovery. (Nov. 15, 2012 Tr. at 33.)

Moreover, when ALPA thereafter served plaintiffs' counsel, in their capacity as counsel for the class, with subpoenas for the depositions of Hefley and Schwartz on December 28, 2012, plaintiffs did not object on grounds of relevance or otherwise suggest they planned to seek a protective order. Instead, Plaintiffs' counsel told us that they (i) had no authority to accept service on behalf of class members; (ii) were not willing to contact Hefley or Schwartz to seek their authorization to accept service; and (iii) did not even know how to get in touch with Hefley or Schwartz, notwithstanding that they had recently finished mailing questionnaires to all class members. Plaintiffs' counsel therefore insisted that we serve Hefley and Schwartz personally. Accordingly, on January 8, 2013, we served Plaintiffs' counsel with notices of subpoenas for both witnesses and undertook to make personal service. Plaintiffs' counsel then waited an additional 2 days, until January 10, 2013, to file this motion.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

The Honorable Joseph E. Irenas, S.U.S.D.J.

3

Based on the date when Plaintiffs' counsel filed their motion, this Court's local rules provided that the motion date would be February 4. Plaintiffs' counsel doubtless appreciated that—due to their needless and inexplicable decision to wait nearly two months after learning of our intent to depose Hefley and Schwartz before filing this motion—the motion date was 4 days *after* the deadline this Court had established for ALPA to complete their depositions.

As plaintiffs' letter acknowledges, ALPA has now managed to serve both Hefley and Schwartz with the subpoenas for their depositions. Hefley and Schwartz have each responded, indicating their willingness and availability to be deposed before the January 31 deadline. Hefley indicated that he is available on January 28, 29, or 30, and Schwartz indicated his availability on the date noticed in the subpoena, January 25. As we indicated in an email to plaintiffs' counsel, ALPA would like to proceed with these depositions in accordance with the schedule imposed by the Court. We also advised plaintiffs' counsel by email that ALPA planned to address the scheduling issues in its opposition to plaintiffs' pending motion for a protective order, but plaintiffs' counsel evidently decided to preempt that filing with the letter it sent yesterday.

Contrary to the suggestion of plaintiffs' counsel that ALPA somehow was trying to moot their motion by proceeding with the Hefley and Schwartz depositions before the Court had an opportunity to resolve the pending motion, ALPA had planned to propose an expedited briefing schedule. In particular, ALPA plans to file its opposition to plaintiffs' motion later today, significantly in advance of the January 22 due date prescribed by the Court's local rules. We would respectfully propose that plaintiffs file any reply by January 22, in the hope that doing so would permit the motion to be resolved prior to the scheduled depositions.

In the alternative, should the Court require additional time to consider and resolve this motion, we would respectfully request that the Court extend our time to complete these depositions.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jay Cohen / 02/17/13".

Jay Cohen

cc: All counsel of record (via ECF)